

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R v. Levy*, 2015 NSSC 164

**Date:** 20150522

**Docket:** CRBW 431771

**Registry:** Bridgewater

Her Majesty the Queen

v.

Terry Roy Levy

**Judge:** The Honourable Justice Gerald R. P. Moir

**Heard:** May 4, 5, 6, 7, 11, 12, and 22, 2015, in Bridgewater, Nova Scotia

**Release of  
Written decision:** June 3, 2015

**Counsel:** Lloyd Tancock and Alonzo Wright, for the Crown  
Christopher Manning and Catherine Benton, Mr. Levy

**Moir J. (Orally):**

[1] Mr. Terry Levy was charged with first degree murder for the shotgun killing of Mr. Terry Green on July 8, 2014 at Little Tancook Island. He was found not guilty of first degree murder, but guilty of second degree murder by a jury on May 12, 2015.

[2] I have to sentence Mr. Levy to life in prison but have to determine whether to increase the ten year parole ineligibility period under section 745.4 of the *Criminal Code*. The objectives of sentence apply to such a determination as do the factors set out in the Code.

[3] The Crown and the defence make a joint recommendation for a modest increase of one and one-half years. I accept the recommendation in the circumstances of this case, about which I will briefly provide a summary. An increase on the lower end is appropriate and in line, I think, with the authorities especially that of Justice LeBlanc and that of the Court of Appeal referred to by Mr. Manning.

[4] I read the victim impact statement prepared by Ms. Nicole Levy, spouse and business partner of the late Mr. Green and biological daughter of Mr. Levy. I accept the facts stated by Ms. Levy in the victim impact statement.

[5] Mr. Levy is 61 years of age, at this time. He has had a career as a truck driver and has been involved in other gainful employment throughout his life. He has no significant criminal record. He is in good health and has no problems with drugs or alcohol.

[6] I agree with Mr. Manning that a recent event does tell us something of Mr. Levy's character. Recognizing that he is going to be in prison for a long time, he has arranged for his home on Little Tancook Island to be sold and the proceeds to be used to assist with his grandson's education.

[7] Although we have a joint recommendation, I should state some basic findings of fact in case they may be relevant on a parole application or in correctional supervision.

[8] The jury recommended that we not increase the period of parole ineligibility. Let me say what they impliedly found and round that out with a few findings of my own.

[9] The jury was satisfied beyond reasonable doubt on three things:

1. Mr. Levy committed an unlawful act, that is shooting Terry Green with firearm;
2. That act killed Mr. Green;
3. Mr. Levy had murderous intent, most likely the first category: meaning to cause death.

[10] On the more controversial issues the jury found:

1. It was not proved beyond reasonable doubt that the murder was planned and deliberate;
2. Provocation was disproved beyond reasonable doubt, most likely on the requirement that a killing be committed suddenly before there was time for passion to cool;
3. Self-defence was disproved beyond a reasonable doubt: for individual jurors this could have turned on one of the self-defence elements, all of them, or a combination of some.

[11] For my part, I find that the shooting did not occur suddenly before passion could cool, and I find the killing not a reasonable response to the perceived threat.

[12] Let me record my findings of fact about the main events of that violent day on that small island.

[13] At eight o'clock in the morning on July 12 last year, for reasons unknown to Terry Levy or his mother, Doris Levy, Mr. Green barged into their home on Little Tancook Island and made his way to the living room where he ordered Jordan Levy, son of Nicole Levy and grandson of Terry Levy, to go to work on a

renovation. He made straight for Mr. Terry Levy who was in the kitchen. Yelling at Mr. Levy and physical violence by Mr. Green followed immediately. I find Mr. Levy did not yell, he did not fight. Mr. Green grabbed him by the neck and repeatedly banged the back of Mr. Levy's head against the kitchen wall while yelling, vilely at Mr. Levy.

[14] Mrs. Levy was fond of her duck plaques. She had to pick them up off the floor. Her son's head had been banged against the wall hard enough to cause them to fall.

[15] This was not the first time the younger Mr. Green had assaulted the older Mr. Levy. However, this time Mr. Levy loaded his twelve-gauge pump action shot gun and went outside. Apparently he had a change of heart, unloaded the gun and stored it.

[16] Later, Mr. Green and Mr. Levy were parties to a telephone call Mr. Levy placed to his daughter's cell phone. As a result of that call, Mr. Green set out to confront Mr. Levy again, although Mr. Green knew Mr. Levy had probably armed himself.

[17] I find Mr. Levy sat in wait along the path Mr. Green would take to the Levy residence. He had retrieved and re-loaded his shot gun. He shot Mr. Green when

the two men were about fifteen feet apart. The blast hit Mr. Green in the chest and nearly severed his aorta. He would be dead in one to two minutes. I find Mr. Levy fired two more shots in rapid succession. One hit Mr. Green's shoulder from behind, the other hit him in the lower back. Mr. Green fell and died.

[18] Mr. Levy laid his rifle down where it could be found. He went to an area near vines that he tended and waited for the police. He surrendered peacefully.

[19] After taking counsel, he provided the police with an extensive statement and he provided a re-enactment for video recording the next day.

[20] Those are my findings to supplement the findings impliedly made by the jury.

[21] It gives me no pleasure, Mr. Levy, to have to sentence you to life in prison. I am setting the period the minimum period for parole eligibility at ten and one-half years. I am prepared to sign a DNA order, which we will prepare. I will sign a fire arms prohibition with a lifetime ban and I am prepared to sign the forfeiture order provided by the Crown, except for items 3 and 5 on schedule "A".

**Crown :**

[22] I believe my friends will agree with me, or I am hoping they will. The parole ineligibility term, I believe you said ten and one-half years.

**COURT**

[23] I meant eleven and one-half years.

[24] Try to take care of yourself, Mr. Levy.

Moir J.